

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEMUEL M. JOYNER and AIJHA L.
JOYNER,

Plaintiffs,

Case No. 11-11876

v.

Honorable Patrick J. Duggan

PATHWAY FINANCIAL LLC, TOP 10
EXECUTIVE MANAGERS, MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS and OFFICERS 1 through
10,000 names to be found in discovery,
ORLANS ASSOCIATES, PLLC,
CITIMORTGAGE, INC., and ALL HOME
SERVICING ENTITIES and OFFICERS 1
through 10,000 names.

Defendants.

ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on July 28, 2011.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On March 25, 2011, Lemuel and Aijha Joyner (“Plaintiffs”) filed this suit against the above-named Defendants, asserting several claims relating to the foreclosure of certain real property located in Detroit, Michigan. Defendants Mortgage Electronic Registration Systems, Inc. (“MERS”) and Citimortgage, Inc. (“Citi”) moved to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), and Defendant Orlans Associates,

P.C. (“Orlans”) joined in this motion. On May 10, 2011, while this motion was pending, Plaintiffs filed a notice of voluntary dismissal pursuant to Rule 41(a)(1)(A). The case was dismissed without prejudice that day. Presently before the Court is a motion to set aside the notice of voluntary dismissal, filed by MERS and Citi. Orlans joined in this motion.

A plaintiff may dismiss an action without a court order by filing a notice of dismissal “before the opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). The moving defendants argue that they have answered the Complaint with their motion to dismiss, barring Plaintiffs’ voluntary dismissal. Because a Rule 12(b)(6) motion is neither an answer nor a motion for summary judgment, it cannot bar voluntary dismissal under Rule 41(a)(1)(A)(i). *Aamot v. Kassel*, 1 F.3d 441, 444 (6th Cir. 1993).

Accordingly,

IT IS ORDERED that the motion to set aside Plaintiffs’ notice of voluntary dismissal is **DENIED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

Kathryn J. Miller, Esq.
Nasseem S. Ramin, Esq.
Timothy B. Myers, Esq.

Lemuel and Aijha Joyner
15435 Ashton
Detroit, MI 48223